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The L. D. Kichler Company and Ella Joynt

**International Brotherhood of Electrical Workers,
Local Union 1377, AFL-CIO and Ella Joynt.**

Cases 8-CA-29644 and 8-CB-8555

September 28, 2001

DECISION AND ORDER

BY CHAIRMAN HURTGEN AND MEMBERS LIEBMAN
AND TRUESDALE

On March 29, 1999, Administrative Law Judge Arthur J. Amchan issued the attached decision. The General Counsel and the Respondent Electrical Workers Union Local 1377 (the Union) filed exceptions and supporting briefs, and the Union filed a brief in opposition to the General Counsel's exceptions.

The Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,¹ and conclusions as modified and to adopt the recommended Order as modified and set forth in full below.²

FACTUAL BACKGROUND

Ella Joynt was employed by the Respondent Employer, an Independence, Ohio, manufacturer of lighting fixtures, as a packer on the night shift from November 6, 1997, until February 2, 1998, when she was discharged at the insistence of the Union.³ At all relevant times, the Employer and the Union were parties to a collective-

bargaining agreement with a union-security clause requiring, inter alia, that covered employees "tender monthly dues or fees to the Union as a condition of employment from and after the thirty-first day following the date of their employment or the effective date of this Agreement, whichever is later," and providing that "[a]ny employee failing to be in compliance with this provision shall, within one (1) week from date of notice sent by the Union to the Company, be discharged from employment of the Company."⁴ The Union's bylaws provide that "[a]ll assessments imposed in accordance with the IBEW Constitution and these bylaws must be paid within the time required to protect the member's continuous good standing and benefits," and establish an initiation fee of \$15 for Joynt's employment category, and monthly dues equal to 1½ times her hourly wage.⁵ In addition, at all relevant times, the Union levied an assessment of \$8 per month on behalf of the International Union.

In November 1997, following Joynt's hire, Richard Gibbs, the Union's night-shift steward, presented Joynt with a union membership application, which read as follows:

I, _____, in the presence of members of the International Brotherhood of Electrical Workers, promise and agree to conform and abide by the Constitution and laws of the I.B.E.W. and its Local Unions. I will further the purposes for which the I.B.E.W. is instituted. I will bear true allegiance to it and will not sacrifice its interest in any manner.

The judge found, and we agree, that Gibbs impliedly solicited her to sign the membership card. Joynt did not complete the application. Thereafter, she requested and received from the Union copies of the Union's bylaws and the parties' collective-bargaining agreement.

On January 15, 1998,⁶ Joynt received her paycheck, which reflected a deduction of \$51.40 for union dues.

¹ The General Counsel and the Respondent Union have excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Drywall Products*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

² We have modified the judge's recommended Order to reflect more closely the violations found. We have additionally omitted the requirement relating to notice mailing in the event that the Respondent Union goes out of business or closes the facility involved in this proceeding. See, e.g., *Laborers International Union of North America (Nicholson Rodio West Dam Joint Venture)*, 332 NLRB No. 124 (2000). The judge's recommended Order contains narrow cease-and-desist language consistent with the Board's usual remedial practice. However, the judge's recommended notice inadvertently employs broad cease and desist language. We have issued a new notice to conform to the language set forth in the Order.

³ Joynt was rehired by Kichler in October 1998, with the Union's agreement, and worked until December 4, 1998, when she was laid off for economic reasons.

⁴ The collective-bargaining agreement also provided as follows:

The Company will check-off monthly dues, assessments, and initiation fees each as designated by the Union, on the basis of individually signed and voluntary check-off authorization cards on forms supplied by the Union. The deductions shall be taken monthly out of the second (2nd) monthly payroll period paycheck for the following month and immediately forwarded to the Financial Secretary of the Union, together with a list that shows the names of individual employees from whom deductions were taken and the names of employees from whom deductions were not taken. The reasons for not taking deductions, or for separations from employment since the previous checkoff list, will be shown.

⁵ The bylaws also provided that dues were payable in advance on a monthly basis for employees who agreed to dues deduction and quarterly in advance for other employees.

⁶ Unless otherwise noted, all subsequent dates are in 1998.

She complained to Kichler's payroll administrator, Mary Louise Mankowski, that she had not authorized dues deduction and wanted the money back. Mankowski also told Joynt that she had to have union dues deducted or she would be discharged. On January 16, James Sabat, the Employer's human resources manager, tried to give Joynt a check from the Employer refunding the \$51.40. Joynt refused to accept it, saying that she wanted the Union to refund the money.

On January 16, James Neubauer, the Union's business manager, faxed a document titled "Notice to Employees Covered by IBEW Union-Security Agreements" (IBEW *Beck* notice) to Chief Steward Bruce Darby. This notice, among other things, explained that employees working under union-security clauses may fulfill their obligations to the Union by becoming members or by electing non-member status, and that nonmembers may object to supporting activities that are not "reasonably related to collective bargaining," and set out the Union's procedure for filing objections.⁷ Although it is unclear whether Darby gave this notice to Joynt on January 16 or January 19, the judge found that Joynt became aware that she was not obligated to pay for the Union's nonrepresentational activities by January 16, and on that day Joynt mailed a letter to the Union stating that she did not want to become a union member but was willing to pay the financial core of the dues as required to maintain her employment.

Joynt's January 22 pay stub reflected a reimbursement of \$51.40, the amount deducted from her January 15 paycheck. On January 26, Neubauer faxed a letter to Sabat stating, *inter alia*, that Joynt was "refusing to tender monthly dues" and that the Union had provided her with a copy of the IBEW *Beck* notice, and demanded that she be discharged under the union-security clause if she refused to pay her dues. Darby showed a copy of this letter to Joynt. The same day, Joynt mailed two letters.

⁷ See *NLRB v. General Motors Corp.*, 373 U.S. 734 (1963) (employees working under a union-security agreement have the right to become or remain nonmembers, subject only to the duty to pay initiation fees and periodic dues); *Communications Workers v. Beck*, 487 U.S. 735, 745 (1988) (unions may not, over the objection of dues-paying non-member employees, expend funds collected under a union-security agreement on activities unrelated to "representational activities," i.e., collective bargaining, contract administration, and grievance adjustment); *California Saw & Knife Works*, 320 NLRB 224, 233 (1995), *enfd. sub nom. Machinists v. NLRB*, 133 F.3d 1012 (7th Cir. 1998), *cert. denied sub nom. Strang v. NLRB*, 525 U.S. 813 (1998) (union has obligation, when or before it seeks to obligate an employee to pay fees and dues under a union-security provision, to inform the employee of his *Beck* and *General Motors* rights to be or remain a nonmember; and, if nonmember status is chosen, to object to paying for nonrepresentational activities, to be given sufficient information to intelligently decide whether to object, and to be apprised of internal union procedures for filing objections).

The first, directed to the International, reiterated her decision not to join the Union and her willingness to pay her *Beck* obligations. The second, directed to Local 1377, stated that she was enclosing a check covering 3 months' dues and a \$15 initiation fee. The letter was annotated "check #3198, \$45.60." The Union's office manager, Linda Hogue, testified that she received the letter but found no check in the envelope. Sometime between January 26 and 29, Hogue informed Joynt by telephone that she owed the Union \$106. On January 29, Neubauer sent Joynt a followup letter, which she may not have received before her discharge.⁸

On February 2, Neubauer sent Sabat a message demanding that the Employer discharge Joynt for failing to pay her union dues. That night, Sabat, his assistant, and Gibbs met with Joynt. Sabat asked her if she had sent a payment to the Union that might not have arrived. Joynt answered that she had not, and did not request more time to pay. Sabat then told Joynt that, pursuant to the Union's request, he was terminating her employment.

On February 5, Joynt received a letter dated January 30 from the International Union. The letter stated that the International's review indicated that Joynt owed the Union \$42.20 and that her dues objection was untimely, as her request was postmarked January 26, "several months after your employment date and over a month after the date when you were first informed about the Plan." The letter concluded that Joynt's next opportunity to invoke fee objector status would be November 1998.

The complaint and the judge's decision

The complaint alleges that Respondent Union is party to a collective-bargaining agreement which contains the union-security clause described above and has, since about November 1997, until about January 19, 1998, violated Section 8(b)(1)(A) by failing to inform Joynt of her rights under *General Motors* and *Beck*,⁹ including the percentage of its funds spent for nonrepresentational activities, Joynt's right to become and/or remain a non-member and *Beck* objector, and, as an objector, her right to be charged only for representational activities and be provided with detailed information concerning the Union's expenditures for representational and nonrepresentational activities.

⁸ Neubauer's letter read, in pertinent part:

Conversations by telephone informed you of a total amount of \$106.00 due to Local 1377 for Initiation and dues. You did not respond to this conversation.

Local 1377 sent a letter to your employer on January 26, 1998 informing the Company that Article 2, section 2.2 of the Collective Agreement between Kichler Lighting and Local 1377, reads: Any employee failing to be in compliance with this provision shall, within one (1) week from date of notice by the Union to the Company, be discharged from employment of the Company.

⁹ See *fn. 7, supra*.

tational activities. The complaint also alleges that the Union violated Section 8(b)(2) by requesting, and causing, Joynt's discharge, and that the Respondent Employer violated Section 8(a)(1) by telling Joynt that she had to sign a dues-checkoff form and become a union member or face discharge.

The judge found that the Union violated Section 8(b)(1)(A) in November 1997, when Gibbs asked Joynt to fill out an application for union membership without explaining to her that her membership obligation was limited to paying only that portion of the Union dues and fees attributable to representational activities. The judge found that the Union's acts contravened the principle, set forth in *California Saw*, supra, that a union must notify employees of their *Beck* and *General Motors* rights before it seeks to obligate them under a union-security clause. The judge also found that the Union violated Section 8(b)(2) by causing the Employer to discharge Joynt without first having fulfilled its obligations to give Joynt notice of her *Beck* rights, including apprising her of the precise amount of dues she owed as an agency fee payer.¹⁰ Finally, the judge found that the Employer, by Mankowski, violated Section 8(a)(1) by telling Joynt that she had to sign a dues-checkoff form or be fired.¹¹

ANALYSIS

1. The Union has excepted to the judge's finding that it violated Section 8(b)(1)(A) in November 1997 by soliciting Joynt's signature on a union membership application without notifying her that, under the union-security clause of its collective-bargaining agreement with Kichler, she was not obligated to become a member and that she was obligated to pay only those dues and fees attributable to the Union's representational activities.¹² The Union argues, inter alia, that the Board held in *California Saw* that the obligation to provide notice to newly hired nonmember employees of the extent of their obligations under a union-security clause is triggered by

the presentation of a membership application and a dues-checkoff authorization, and that in this case Gibbs presented Joynt with a membership application alone. We find the Union's exceptions without merit, and we agree with the judge that the Union violated Section 8(b)(1)(A) when it solicited Joynt's membership in the Union without providing notice of her rights under *General Motors* and *Beck*.

As an initial matter, we disagree with the Union's interpretation of the Board's holding in *California Saw* with respect to notice to newly hired nonmembers. In that case, the Board addressed the issue of whether and when a union must inform newly hired nonmember employees of their *Beck* rights. The Board examined the notice procedures of the respondent union in that case, and found that:

[n]ewly hired employees are typically presented . . . with both a union membership application form and a dues-checkoff authorization form. The presentation to a newly hired nonmember employee of both the dues-checkoff authorization form and the membership form may, absent concurrent notification of *Beck* rights, mislead these newly hired nonmember employees to believe that payment of full dues and assumption of full membership is required. The presentation of the membership application and dues-checkoff form to a newly hired nonmember employee constitutes an attempt to obligate an employee to pay full dues. Basic considerations of fairness require that the union at that time inform newly hired employees of their *Beck* rights.¹³

The Board has also found that, in order to fully inform employees of their *Beck* rights, the union must also tell them of their rights under *NLRB v. General Motors Corp.*, supra, 373 U.S. 734.¹⁴

The key point of this analysis, reiterated elsewhere in *California Saw*, is that a union must notify a newly hired nonmember of *Beck* and *General Motors* rights when (or before) it attempts to obligate him to pay dues. Notice at this time is essential because, in its absence, an employee may be misled into believing that the union-security provision requires full union membership or the payment of full dues. As the Board explained, requiring a union to provide notice to newly hired nonmembers

¹⁰ The judge found that Joynt was "generally uncomplimentary" about the Union and that she apparently wished to avoid paying dues or fees. We agree with the judge that, under the circumstances here, Joynt's attitude toward the Union is not relevant, and we reject the Union's contention that the record demonstrates that Joynt willfully and deliberately evaded her financial obligations, thereby excusing deficiencies in fulfilling the notice requirement. Thus, the facts here are distinguishable from those in cases in which the Board, based on an employee's conduct, dismissed allegations that a union violated Sec. 8(b)(2). In *Food & Commercial Workers Local 368A (Professional Services)*, 317 NLRB 352, 355 (1995), for example, the union warned the discharged employee repeatedly that she was in danger of discharge if she did not pay her arrearages and the employee made a "conscious and deliberate" decision to evade the union-security provision. The Union has failed to demonstrate that Joynt had made such a choice.

¹¹ There are no exceptions to this finding.

¹² See *Beck*, supra, 487 U.S. 735, 745.

¹³ 320 NLRB at 235 (footnote omitted and emphasis added).

¹⁴ Id. at 235, fn. 57. *Paper Workers Local 1033 (Weyerhaeuser Paper)*, 320 NLRB 349, 350 (1995), reversed, *Buzenius v. NLRB*, 124 F.3d 788 (6th Cir. 1997), cert. granted and judgment vacated *Paperworkers Local 1033 v. Buzenius*, 525 U.S. 979 (1998), on remand to *Buzenius v. NLRB*, 191 F.3d 641 (6th Cir. 1999) (newly hired nonmember employees must be given notice of their rights under *General Motors*, supra, at the time the union first seeks to obligate them to pay dues).

promotes the dissemination of accurate information to these employees regarding their financial obligations to the union [and] vindicates the Court's concern for fairness by ensuring that *at the time the union first seeks to obligate newly hired nonmember employees to pay dues, the affected nonmember employee is also informed of the right under Beck to pay only a proportionate share of full dues*. This notice requirement furnishes significant protection to the interests of the individual nonmember employee vis-a-vis *Beck* rights, without compromising the countervailing collective interests of bargaining unit employees in ensuring that every unit employee contributes to the cost of collective-bargaining activities.

For these reasons, we find that a union acts arbitrarily and in bad faith—in breach of its duty of fair representation—when it fails to inform newly hired nonmembers of their *Beck* rights at the time the union first seeks to obligate these newly hired nonmember employees to pay dues.¹⁵

Thus, the rule articulated in *California Saw*—that a union must inform newly hired nonmembers of their rights when it first seeks to obligate the employees to pay dues—is a general one, with the purpose of protecting newly hired nonmembers from confusion about the extent of their obligations, at a time when they are initially required to make choices regarding their Section 7 right to engage in or refrain from union activities in the context of a union-security provision.

In *California Saw*, the occasion of the respondent union's initial effort to obligate newly hired nonmember employees to pay dues customarily took the form of presenting a new hire with a membership application and a dues-checkoff form. In the case at hand, Joynt was offered only a membership application. We find that, under the circumstances here, the difference is not dispositive. The solicitation of membership in this case carried with it the same implicit request that the employee commit to paying full dues, and the same potential that the employee would be misled regarding his obligations under the union-security clause, as did the union's presentation of the membership application and dues-checkoff authorization in *California Saw*. Thus, because Gibbs' solicitation of Joynt to join the Union, without concurrent notice of her rights, created the possibility that Joynt would be misled into believing that "assumption of full membership is required," the Union breached its duty of fair representation by placing Joynt in the position of

potentially believing that she was obligated to join the Union, without informing her of her rights.

The facts of this case illustrate the validity of the Board's concern in *California Saw* with crafting a notice rule that protects the interests of nonmembers newly hired into a unit covered by a union-security agreement, and the real possibilities for confusion when a union attempts to collect dues from such an employee without the appropriate notice. As a matter of law, execution of the membership application constitutes a waiver of an employee's Section 7 right to refrain from union activities by remaining a nonmember, and therefore of all *Beck* rights, which apply only to nonmembers. Further, it is clear from the facts set out above that Union membership in this case carries with it the obligation to pay dues, fees, and assessments. Although the application (quoted in full above) does not refer on its face to "dues" or "fees," or directly notify the potential member of an attendant financial obligation, it requires the signer to "abide by the Constitution and laws" of the Union—including the obligation under the Local Union's bylaws to pay dues, fees, and assessments, which may not be limited to amounts necessary to support representational activities. The potential that an employee presented with such an application by his steward in a workplace governed by a union-security agreement would, without notice of his rights, agree to become a full member and pay dues and fees on the assumption that he was required to do so is apparent. *California Saw* holds that the union's obligation to provide notice of employee rights under a union-security clause is activated *at the time it seeks to impose the union-security obligation on the employee*. Determining when that moment has occurred in different factual settings will be a matter of case-by-case analysis.¹⁶ Here, we find that soliciting Joynt's membership in the Union by presenting her with the membership application, as quoted above, constituted an attempt to obligate her to pay full dues under the parties' union-security clause, and thus triggered the Union's obligation to notify her of her *Beck* rights.

2. The judge found, inter alia, that the Union violated Section 8(b)(2) by demanding and causing Joynt's termination without fulfilling its obligations under *Beck*, supra, and *Philadelphia Sheraton Corp.*¹⁷ We agree that the Union failed to fulfill its obligations under *Philadelphia*

¹⁶ Clearly, no such notice obligation would attach if a union solicited execution of a membership application during an organizing campaign, or in any setting apart from the presence of a union-security clause where the union had not previously notified the employee of his rights under *Beck* and *General Motors*.

¹⁷ 136 NLRB 888 (1962), enf. sub nom. *NLRB v. Hotel Employees Local 568*, 320 F.2d 254 (3d Cir. 1963), discussed infra.

¹⁵ 320 NLRB at 233 (footnotes omitted).

Sheraton before seeking Joynt's discharge, and we therefore find that the Union violated Section 8(b)(2) by requesting and causing Joynt's discharge. Accordingly, we find it unnecessary to pass on the judge's finding that a failure to provide initial *Beck* notice was a basis for the 8(b)(2) violation.¹⁸

Section 8(b)(2) makes it an unfair labor practice for a union

to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a)(3) or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation

fees uniformly required as a condition of acquiring or retaining membership.

Section 8(a)(3) prohibits employer discrimination against employees on the basis of union activities, but permits employers to make union-security agreements with their employees' bargaining representatives, providing, in relevant part, that

no employer shall justify any discrimination against an employee for nonmembership in a labor organization if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership.

Thus, a union may lawfully demand the discharge of an employee who fails to meet the obligations of a negotiated union-security clause. The Board has held, however, that the discharge of an employee for failure to meet financial obligations "should not be sanctioned unless as a practical matter the Union has taken the necessary steps to make certain that a reasonable employee will not fail to meet his membership obligation through ignorance or inadvertence but will do so only as a matter of conscious choice."¹⁹

Thus, when a union seeks to enforce a union-security clause, it "has a fiduciary duty to deal fairly with the employee [T] he union must provide the employee with a *statement of the precise amount owed, the period for which dues are owed and the method by which the amount was computed*, and give the employee an *opportunity to make payment*."²⁰ In addition, "[o]nly actual notice, not constructive notice, will satisfy the union's fiduciary duty."²¹

The record reveals a patent failure by the Union to comply with these preconditions to a lawful demand of discharge in Joynt's case. First, the facts as found by the judge show that the Union failed to provide Joynt with a statement of the precise amount owed or the number of months for which dues were sought. Indeed, on the basis of the facts as found by the judge, the precise amount of Joynt's arrearages cannot be determined. Joynt was informed that she owed the Union \$106, which the judge calculated as the equivalent of 5 months' dues and a \$15 initiation fee. She herself calculated that she owed the Union \$45.60; Kichler deducted \$51.40 from her paycheck. When a union demands that an employee be dis-

¹⁸ In *California Saw*, supra, the Board held that

when or before a union seeks to obligate an employee to pay fees and dues under a union-security clause, the union should inform the employee that he has the right to be or remain a nonmember and that nonmembers have the right (1) to object to paying for union activities not germane to the union's duties as bargaining agent and to obtain a reduction in fees for such activities; (2) to be given sufficient information to enable the employee to intelligently decide whether to object; and (3) to be apprised of any internal union procedures for filing objections.

320 NLRB at 233. Joynt was provided with the IBEW *Beck* notice in January. That notice adequately covered the Board's requirements for the initial notice to nonmembers when a union imposes the union-security obligation. To the extent the judge's analysis can be read to require that initial *Beck* notice must contain a breakdown of union expenses, we disagree. In *Teamsters Local 166 (Dyncorp Support Services)*, 327 NLRB 950 (1999), rev'd. in part *Penrod v. NLRB*, 203 F.3d 41 (D.C. Cir. 2000), the Board, interpreting *California Saw*, held that "a union is required to inform only objectors, not nonmembers in general, of the percentage by which dues and fees are reduced for objectors." Slip op. at 3 (citation omitted). See also *Office Employees Local 29 (Dameron Hospital Assn)*, 331 NLRB No. 15 (2000), slip op. fn. 8 (discussing the court's opinion in *Penrod v. NLRB*, supra).

With respect to the judge's discussion of the relationship between a union's obligations under *Beck* and *Philadelphia Sheraton*, we note that in *Production Workers Local 707 (Mavo Leasing Co.)*, 322 NLRB 35 (1996), enf'd. 161 F.3d 1047 (7th Cir. 1998), the Board found that the union violated Sec. 8(b)(1)(A) and 8(b)(2) by causing the discharge of nonmembers for failing to meet the financial obligation under a union-security provision without first providing them with notice of *Beck* rights. As the Board stated, "[u]nder *California Saw*, a union is required to tender a notice of *Beck* rights to nonmember unit employees before it can subject employees to the monetary obligations imposed by a union-security provision. . . . [I]t follows that, in the absence of such notice, the Respondent could not seek to enforce the union-security provision by causing or seeking to cause the discharge of [nonmember employees] in order to obligate them to pay dues and fees under that provision." Id. at 35. See also *Monson Trucking*, 324 NLRB 933, 936 (1997), enf'd. 204 F.3d 822 (8th Cir. 2000).

We need not pass on the judge's comment in footnote 8 of his decision that, if the *Beck* notice had been adequate, the Union would not have violated Sec. 8(b)(2). Likewise, we need not pass on the judge's comments regarding the analogy between "salting" and enforcement of union security.

¹⁹ *Monson Trucking*, supra, 324 NLRB 933, 934 (citations and emphasis omitted).

²⁰ *Asociacion Hospital Del Maestro*, 323 NLRB 93, 94 (1997), citing *Philadelphia Sheraton Corp.* supra, 136 NLRB 888 (emphasis added).

²¹ *Teamsters Local 162 v. NLRB (Platt Electric Supply)*, 568 F.2d 665, 668-669 (9th Cir.1978).

charged, the law requires that there be no mystery about what the employee owes.

In addition to accurately calculating an employee's arrearages and providing complete information, a union seeking an employee's discharge is obligated to give the employee "an opportunity to make payment."²² Here, the key events relating to the Union's efforts to obligate Joynt under the union-security clause happened very quickly. On January 15, Joynt protested the deduction of dues from her paycheck; the earliest she could have received her *Beck* notice was January 16; on January 26, the Union demanded her discharge; on February 2, she was terminated. This hasty sequence of events, coupled with the lack of detail respecting the amount of Joynt's arrearages, did not provide Joynt with an adequate opportunity to make good her obligations.

Thus, with respect to the obligations imposed by *Philadelphia Sheraton*, the Union failed to lay the necessary groundwork for a lawful demand of discharge. Under these circumstances, we find that the Union violated Section 8(b)(2) by requesting and causing Joynt's discharge.²³

AMENDED CONCLUSIONS OF LAW

1. Respondent L.D. Kichler Company, through its agent, Mary Lou Mankowski, violated Section 8(a)(1) by telling employee Ella Joynt that she had to sign a dues-deduction authorization or be fired.

2. Respondent IBEW Local 1377, Cleveland, Ohio, violated Section 8(b)(1)(A) in November 1997 by failing to provide employee Ella Joynt notice of her rights not to become a member and to pay only union dues and fees attributable to the Union's representational activities at the time it first sought to obligate her to pay dues under the union-security clause.

3. Respondent IBEW Local 1377 violated Section 8(b)(2) by requesting Respondent L.D. Kichler Company to discharge employee Ella Joynt on about February 2, 1998, and by causing her discharge.

4. Respondents L.D. Kichler Company and Respondent IBEW Local 1377 have not otherwise violated the Act.

ORDER²⁴

A. The Respondent, L.D. Kichler Company, Independence, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Coercively telling any employee that he must sign a dues-deduction authorization form or face discharge.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days after service by the Region, post at its Independence, Ohio facility copies of the attached notice marked "Appendix A."²⁵ Copies of the notice, on forms provided by the Regional Director for Region 8, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since January 15, 1998.

(b) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps the Respondent has taken to comply.

B. Respondent, International Brotherhood of Electrical Workers, Local Union 1377, AFL-CIO, Cleveland, Ohio, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Failing to notify employees subject to a union-security clause of their right not to become a union member and to pay only union dues and fees attributable to representational activities before accepting such dues or fees.

(b) Requesting and causing L.D. Kichler Company to discharge or otherwise discriminate against Ella Joynt, or

²² *Id.*

²³ We find no merit in the Union's exception to the judge's recommendation that backpay, less interim earnings, be ordered from the date of Joynt's discharge until her October 1998 reinstatement. See, e.g., *Sheet Metal Workers Local 355 (Zinsco Electrical Products)*, 254 NLRB 773 (1981), *enfd.* in *part*, 716 F.2d 1249 (9th Cir.1983).

²⁴ We shall modify the judge's recommended Order in accordance with our recent decision in *Ferguson Electric Co.*, 335 NLRB No. 15 (2001).

²⁵ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted By Order Of The National Labor Relations Board" shall read "Posted Pursuant To A Judgment Of The United States Court Of Appeals Enforcing An Order Of The National Labor Relations Board."

any other employee, for failure to tender to the Respondent Union periodic dues, without giving that employee notice of the amount owed, the period for which dues are owed, and the method by which the amount owed was computed, and without providing the employee with an opportunity to pay.

(c) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make Ella Joynt whole for any loss of earnings and other benefits suffered as a result of the discrimination against her in the manner set forth in the Remedy section of the judge's decision.

(b) Within 14 days from the date of this Order, remove from its files, and ask the Employer to remove from the Employer's files, any reference to the unlawful discharge and within 3 days thereafter notify Ella Joynt in writing that this has been done and that it will not use the discharge against her in any way.

(c) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(d) Within 14 days after service by the Region, post at its union offices and meeting halls copies of the attached notice marked "Appendix B."²⁶ Copies of the notice, on forms provided by the Regional Director for Region 8, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Sign and return to the Regional Director sufficient copies of the notice for posting by L.D. Kichler Company, if willing, at all places where notices to employees are customarily posted.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a re-

sponsible official on a form provided by the Region attesting to the steps the Respondent has taken to comply.

Dated, Washington, D.C. September 28, 2001

| | |
|--------------------|----------|
| Peter J. Hurtgen, | Chairman |
| Wilma B. Liebman, | Member |
| John C. Truesdale, | Member |

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX A

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT tell employees that they must sign a union dues-deduction authorization form or face discharge.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

L.D. KICHLER COMPANY

APPENDIX B

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union

²⁶ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted By Order Of The National Labor Relations Board" shall read "Posted Pursuant To A Judgment Of The United States Court Of Appeals Enforcing An Order Of The National Labor Relations Board."

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT fail to notify employees subject to a union-security clause of their rights not to become a union member and to pay only union dues and fees attributable to representational activities before accepting such dues or fees.

WE WILL NOT request or cause L.D. Kichler Company to discharge or otherwise discriminate against Ella Joynt, or any other employee, for failure to tender to the Respondent Union periodic dues, without giving that employee notice of the amount owed, the period for which dues are owed, and the method by which the amount was computed, and without providing the employee with an opportunity to pay.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL make Ella Joynt whole for any loss of earnings and other benefits suffered as a result of our causing her termination on February 2, 1998.

WE WILL, within 14 days from the date of the Board's Order, remove from our files, and ask the Employer to remove from the Employer's files, any reference to the unlawful discharge, and WE WILL, within 3 days thereafter, notify Ella Joynt in writing that this has been done and that we will not use the discharge against her in any way.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION 1377

Nancy Recko, Esq., for the General Counsel.

Eldred A. Gentry, Esq. (Gentry & Gentry), of Cleveland, Ohio, for Respondent, L.D. Kichler Company.

Susannah Muskovitz, Esq. (Faulkner, Sackett, & Muskovitz), of Cleveland, Ohio, for Respondent, IBEW Local Union 1377.

DECISION

STATEMENT OF THE CASE

ARTHUR J. AMCHAN, Administrative Law Judge. This case was tried in Cleveland, Ohio, on January 20–21, 1999. The charges were filed February 6, 1998, and the complaint was issued June 23, 1998.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel, L. D. Kichler Company and IBEW Local 1377, I make the following

FINDINGS OF FACT

I. JURISDICTION

L. D. Kichler Company (Kichler), a corporation, manufactures lighting fixtures at its facility in Independence, Ohio, from which it annually sells and ships goods valued in excess of \$50,000 directly to points outside the State of Ohio. Kichler admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. The Union, International Brotherhood of Electrical Workers, Local 1377, admits and I find that it is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

Ella Joynt worked for L.D. Kichler packing lighting fixtures into boxes, from November 6, 1997, until February 2, 1998, when she was discharged at the insistence of the Union.¹ The General Counsel alleges that the Union violated section 8(b)(1)(A) of the Act by soliciting her membership in the Union without adequately apprising her of her "Beck" and "General Motors" rights i.e., the rights of an employee subject to a union security clause set forth in *Communications Workers of America v. Beck*, 108 S. Ct. 2641 (1988), and *NLRB v. General Motors Corp.*, 373 U.S. 734 (1963). The General Counsel further alleges that the Union violated section 8(b)(2) of the Act by insisting that Kichler discharge Joynt, without providing her adequate notice of her financial obligations and in failing to afford Joynt a reasonable opportunity to pay the initiation fees and periodic dues that she owed to the Union.

The General Counsel also alleges violations of section 8(a)(1) by Kichler. He alleges that Kichler officials told Joynt that she had to join the Union and sign a dues-deduction authorization form or face discharge. The General Counsel also alleges that Kichler's human resources manager, James Sabat, unlawfully interrogated Joynt about her union membership, sympathies and activities.

Ella Joynt's two and three quarters' months of employment at L.D. Kichler in 1997–1998

After 8 days of training on the day shift, Ella Joynt was assigned to the Kichler's night shift, 4 p.m. to 12:30 a.m. She packed boxes for \$6.50 per hour plus a 30-cent shift differential. Joynt did not participate in a company orientation program during her first 2 months of employment. Sometime in November, she was approached by Richard Gibbs, who introduced himself as the Union's night-shift steward. Gibbs gave her a union membership application. Under the circumstances, Gibbs impliedly solicited Joynt to sign the authorization card. She did not do so.

During November 1997, Joynt became aware that she was a member of a bargaining unit of Kichler's production and maintenance employees, which was represented by Local 1377.

¹ Although not germane to the issues in this case, Joynt was rehired by Kichler in October 1998, with the consent of the Union. She worked until December 4, 1998, when she and other employees were laid off for economic reasons.

She also learned that the Union had a collective-bargaining agreement with Kichler that required her to pay dues to it. She acquired a copy of the collective-bargaining agreement and the Union's bylaws.

The union-security clause in the above-mentioned agreement requires that all employees in the bargaining unit tender monthly dues or fees to the Union after the 31st day following the date of their employment. It provides further that within 1 week of notice sent by the Union to the company, a noncomplying employee shall be discharged by Kichler. From the bylaws, Joynt learned that the Union's initiation fee for manufacturing employees was \$15 and that the monthly dues were an amount equal to 1½ times an employee's hourly wage rate. She may not have understood that there was an additional per capita monthly assessment levied on behalf of the International Union. Between November 1997, and February 1998, this amount was \$8 per month.

Joynt worked the night shift immediately preceding the Thanksgiving holiday. In early December she called James Neubauer, the Union's business manager and financial secretary, to complain about the fact that she had not received holiday pay for Thanksgiving.² Neubauer informed Joynt that she was not entitled to holiday pay for Thanksgiving because she had not worked for Kichler long enough. Joynt, who already had a copy of the collective-bargaining agreement, became very argumentative because nothing in the agreement indicated that an employee's entitlement to holiday pay was in any way conditioned on length of service.

In early January, Joynt called Neubauer again to complain about the fact that she did not receive holiday pay for Christmas. She was generally uncomplimentary about the Union and its stewards in this conversation. When she failed to receive holiday pay for New Year's, she called Neubauer a third time.

On January 15, 1998, Joynt noticed that her check stub for the pay period ending January 10, 1998, reflected a deduction for union dues in the amount of \$51.40. She immediately complained to her supervisor, who referred her to Kichler's payroll administrator, Mary Louise Mankowski. Joynt told Mankowski she had never authorized Kichler to deduct union dues from her salary and that she wanted the money back. Mankowski told her that she had to have union dues deducted or she would have to be discharged.

Shortly thereafter Joynt was approached by James Sabat, Kichler's human resources manager, who scheduled her for an orientation the next day. On January 16, Joynt became upset when Sabat discussed Kichler's dues-checkoff procedure. When he tried to present her with a check refunding the \$51.40 which had been deducted from her salary for Union dues, she refused to take it, insisting that she wanted to receive the

money from the Union. Sabat read the union-security clause of the collective-bargaining agreement to Joynt.³

Sabat also talked to Union Business Manager Neubauer on Friday, January 16, advising him that the Union needed to refund Joynt's dues to Kichler. The same day Neubauer faxed to Chief Steward Bruce Darby the IBEW's two-page notice regarding agency fee payers. Although Darby may not have given this notice to Joynt until the following Monday, Joynt became aware of the fact that she was not obligated to pay for the Union's nonrepresentational activities by the 16th.⁴ That day she mailed a letter to Local 1377 advising it that she did not wish to become a member of the Union, but was willing to pay the financial core of the dues as required to maintain her employment with Kichler. Joynt is apparently the first Kichler employee and the first member of a bargaining unit represented by Local 1377 to eschew union membership and object to the payment of the nonrepresentational portion of the union's dues.

The notice given Joynt by Darby explained the difference between "chargeable" or representational activities related to collective bargaining and "nonchargeable" activities such as support for political candidates, general community services, and legislative activities. The notice also explained the procedure for obtaining a fee reduction under the terms of the IBEW Agency Fee Payers Objection Plan. It advised that a notice of the open period for filing objections is published annually in the October issue of the IBEW Journal. It further stated that objections must be filed in the month of November with the International Secretary of the IBEW in Washington, D.C. New employees and employees who resign their union membership are required to file objections for the balance of the calendar year within 30 days of becoming obligated to pay agency fees.

The IBEW notice informs employees that the International Union and their local union will mail dues objectors separate fee reduction checks with explanatory data in January after they separately calculate the chargeable portion of the dues for the local union and the International Union. It states that for fiscal year 1995, chargeable activities accounted for 75.30 percent of the International's expenditures and that local unions vary between 90 & 95 percent of their expenditures allocated to chargeable activities. More recent accounting information was not provided.

Joynt received a pay stub on Thursday, January 22, 1998, that reflected a refund of the union dues that had previously been deducted. Sabat wrote Neubauer the same day requesting that the Union refund this amount to Kichler. On the following

² The accounts given by Joynt, Neubauer, and the Union's office manager, Linda Hogue, regarding Joynt's contacts with the Union hall differ in a number of respects, particularly with regard to the timing of these contacts. I find Neubauer's account to be the most reliable and credit him over Joynt and Hogue where there is a conflict in the testimony.

³ I do not credit Joynt's account of her conversations with Sabat in their entirety. To the extent that Sabat's testimony contradicts Joynt's testimony in this regard, I credit Sabat.

⁴ Darby's recollection is that he gave Joynt the notice the same day he filed a grievance on her behalf regarding the company's failure to pay her holiday pay. The grievance, which was filed by Darby on January 19, was denied by Kichler on the grounds that employees who are probationary are not entitled to holiday pay. The collective-bargaining agreement specifies that employees serve a 60-day probationary period. It does not state that probationary employees are not entitled to holiday pay or any other benefits. However, it has been a long-standing practice at Kichler not to pay probationary employees for holidays.

Monday, January 26, Neubauer faxed a letter to Sabat stating that the Union had complied with its *Beck* obligations with regard to Joynt and demanding that she be discharged in accordance with the terms of the collective-bargaining agreement if she continued to refuse to pay her dues. Neubauer also faxed a copy of this letter to Darby, who showed it to Joynt.

The same evening Joynt mailed to the Union two letters. The first, directed to the international union, reiterated her decision not to join the Union but stated her willingness to pay her "financial core" obligations. The second, directed to Local 1377, stated that she was enclosing a check to cover 3 months of union dues (for the period December 6 through March 6) and an initiation fee of \$15. On the lower left hand side of the letter she wrote "check #3198, \$45.60." The Union's office manager, Linda Hogue, received the letters but there was no check inside the envelope.⁵

Between January 26 and 29, Linda Hogue had a telephone conversation with Joynt in which Hogue informed her that Joynt owed the Union \$106.⁶ On January 29, Neubauer sent Joynt a letter to that effect. Joynt may not have received this letter prior to her discharge.

The following Monday, February 2, Neubauer called and then sent Sabat a faxed message demanding that Kichler comply with the collective-bargaining agreement and immediately discharge Joynt for her failure to pay her monthly union dues. Shortly after her shift started, Joynt was summoned to a meeting with Sabat, Gibbs, and Sabat's assistant, Debra Schultz-Potter. Sabat asked Joynt if she had sent any money to the Union that it might not yet have received. Joynt replied in the negative and did not request any more time to pay her dues. Sabat thereupon informed her that, pursuant to the Union's request, he had to terminate her employment.

On February 5, Joynt received a letter from the secretary of the International Union, dated January 30, 1998, rejecting her request for a dues reduction on the grounds that her request was untimely. The letter stated that, based on conversations with Neubauer, the International Union understood that Joynt was informed about the IBEW Agency Fee Payers Objection Plan during the

first week of December 1997.⁷ The letter thus concluded that Joynt was obligated to seek a reduction for the 1998 calendar year within 30 days of her employment date. The letter further advised that Joynt's next opportunity to request fee objector status would occur in November 1998.

ANALYSIS

The Union violated Section 8(b)(1)(A) of the Act in seeking to collect Union dues from Ella Joynt without notifying her of her "Beck" and "General Motors" rights.

The Union violated Section 8(b)(2) in demanding that Kichler terminate Ella Joynt without adequately advising Joynt of her "Beck" rights and giving her an inadequate opportunity to exercise those rights.

In *NLRB v. General Motors Corp.*, supra, the U. S. Supreme Court held that an employee's membership obligation under a union-security clause is limited to its "financial core", i.e., paying an amount equivalent to initiation fees and dues. More recently, in *Communications Workers v. Beck*, 487 U.S. 735, 108 S. Ct. 2641 (1988), the Court held that Section 8(a)(3) of the National Labor Relations Act does not permit a collective-bargaining representative, over the objection of dues-paying nonmember employees, to expend funds collected under a union-security agreement on activities unrelated to collective bargaining, contract administration or grievance adjustment.

Many of the implications of the *Beck* decision were clarified by the Board in *California Saw & Knife Works*, 320 NLRB 224 (1995), enf. sub nom. *Machinists v. NLRB*, 133 F.3d 1012 (7th Cir. 1998), cert. denied sub nom. *Strang v. NLRB*, 119 S. Ct. 47 (1998). The Board's decision in *California Saw* provides the analytical framework for deciding the instant case.

In *California Saw*, the Board stated that "in general . . . that if a union seeks to apply a union security clause to unit employees, it has an obligation under the duty of fair representation to notify them of their *Beck* rights before they become subject to obligations under the clause." The Board found further that a union has an obligation to give a *Beck* rights notice to newly hired nonmember employees at the time the Union seeks to obligate these newly hired employees to pay dues.

Applying these principles, I conclude that the Union violated Section 8(b)(1)(A) in November 1997, when steward Richard Gibbs asked Joynt to fill out an application for membership in the Union without explaining to her that her "membership" obligation was limited to paying only that portion of the union dues and fees attributable to representational activities. Also see *Paperworkers Local 1033 (Weyerhaeuser Paper Co.)*, 320 NLRB 349 (1995).

I also find that the Union violated Section 8(b)(2) in insisting that Kichler discharge Ella Joynt and in causing her termination. However, my reasons for doing so are somewhat different than those primarily advanced by the General Counsel.

The essence of the General Counsel's brief appears to be: (1) that the Union did not afford Joynt sufficient time to meet her financial obligations after providing her notice of her *GM* and

⁵ I credit Hogue's testimony over that of Joynt in this regard despite the fact that Hogue's testimony evidences faulty recollection with regard to many events. One reason I credit Hogue's testimony about the check is that I credit Sabat's testimony that on February 2, Joynt did not, contrary to her testimony, claim to have paid the Union any dues. Even if I believed Joynt's version of her conversation with Hogue about the amount of dues she owed the Union, Joynt was aware she had paid less than half what the Union claimed it owed her when she met with Sabat on February 2 (assuming she paid anything). As a result I find Sabat and Hogue more credible than Joynt as to the question of whether Joynt sent the Union a check for \$45.60.

On the other hand, I note that the International Union's letter to Joynt of January 30, 1998, states that she owes Local 1377 \$42.20. This letter is consistent with Joynt's claim that she paid the Union \$45.60. The two figures added, \$87.80, equals 4 months dues plus the initiation fee.

⁶ This figure is equal to 5 months of union dues, plus the \$15 initiation fee.

⁷ Upon receiving Joynt's letter of January 16, Neubauer called Demetrious Halkyn, an assistant to the President of the IBEW in Washington, D.C., to discuss the letter.

Beck rights; and (2) that it sought Joynt's discharge for her refusal to sign a dues-checkoff authorization, rather than because of her failure to tender dues (GC's Br. at pp. 21 and 29-30).⁸ I find, however, that the gravamen of the violation is that the Union never adequately informed Joynt of her *Beck* rights and never provided her with an opportunity to exercise those rights before insisting on her discharge.

The Union claims, at page 25 of its brief, that "it is undisputed that Joynt was informed of her *Beck* rights, at the very latest, on January 19, 1998." In this regard, paragraph 11 of the complaint alleges a failure to inform Joynt of her *Beck* rights from November 1997, until "on or about January 19, 1998." However, the adequacy of the Union's *Beck* notice is encompassed by paragraph 12(c) of the complaint, which alleges that the Union caused the discharge of Ella Joynt, "without affording the Charging Party a reasonable opportunity to make payment of uniformly required initiation fees and periodic dues following *adequate notice of her obligations in that regard*" (emphasis added).

Moreover, whereas the General Counsel appears to concede the adequacy of the Union's *Beck* notice in some parts of its brief, it clearly does not do so at others. At page 22, the General Counsel states that on January 19, 1998, "the Union was finally providing Joynt with her *General Motors* and *Beck* right." However, at page 29, the General Counsel argues that: (1) the Union failed to provide Joynt with reasonable information regarding the amount of money that she owed the Union; (2) that Linda Hogue refused to answer Joynt's questions regarding a reduction in dues; and (3) that "Joynt was discharged without ever having gotten clear information as to how much she owed the Union."

I find a violation of Section (b)(2) because the Union never fulfilled its obligations to Joynt under *Beck* before insisting on her termination. Assuming that this rationale is a departure from the complaint and/or the General Counsel's theory of the case, I find that this issue is closely connected to the allegations of the complaint and has been fully litigated. The Union did not object to the introduction into evidence of the IBEW's notice to agency fee payers or the International Union's January 30 letter to Joynt. Moreover, the Union elicited testimony from its witnesses regarding the substance of the notice given to Joynt of her *Beck* rights.

Had the Union given Joynt additional information regarding her *Beck* rights it would be in this record. I therefore conclude that the Union is not prejudiced by finding a 8(b)(2) violation on the basis on the inadequacy of its notice to Joynt and its failure to ever accord Joynt her *Beck* rights prior to demanding

her termination. The IBEW *Beck* notice did not apprise Joynt of the precise amount of dues she would owe as an agency-fee payer. It merely gave her a general idea as to how the chargeable portion of the dues would be calculated in the future. The only figures provided were those from fiscal year 1995.⁹ Moreover, the Union never provided Joynt with an opportunity to become an agency-fee payer. Her request in this regard was referred to the International Union, which rejected it on the erroneous grounds that Joynt was informed of its fee objector's plan in December.

The Board has long held that before a union requests an employer to discharge an employee pursuant to a union security agreement, it has a duty to notify the employee of the precise nature of their obligations to the union, including the amount of money that is owed, e.g., *Philadelphia Sheraton Corp.*, 136 NLRB 888, 896 (1962). In the instant case the Union did not satisfy this obligation. Local 1377 demanded that Joynt pay both the representational and nonrepresentational portion of her dues. However, Joynt's financial obligation to the Union consisted of the representation component of the Union's dues.

Tension may exist between the *Philadelphia Sheraton* line of cases and those which hold that unions will not be held strictly to the Board's notification rules when dealing with an employee who intentionally avoids his or her dues obligations, see, e.g., *Food & Commercial Workers Local 368A (Professional Services)*, 317 NLRB 352, 354-355 (1995). However, most or all of these cases predate *California Saw*. They therefore do not stand for the proposition that a union can insist on the discharge of an employee without fulfilling its *Beck* obligations with respect to this individual.

Ella Joynt appears not to have wanted to pay any union dues, rather than merely just the nonrepresentational portion of the dues. Her dispute with the Union arises from her dissatisfaction with the answers she received from it regarding her entitlement to holiday pay. However, I deem all this to be irrelevant to the disposition of this case.

The position of unions with regard to agency-fee objectors is analogous to that of non-union contractors in the "salting" context. Although the nonunion employer may doubt the good faith of the salt in seeking employment, it cannot discriminate against him or her. It must test the salt's good faith by considering him or her for employment in a nondiscriminatory fashion. Similarly, with regard to fee objectors like Joynt, a union must afford them their *Beck* rights and proceed to enforce their contractual rights only after the employee fails to pay the dues chargeable to representational activities. Since the Union in this matter did not afford Joynt her rights under *Beck* and *California Saw*, I conclude that it violated Section 8(b)(2) in demanding that Kichler discharge her.

⁸ Had the Union provided Joynt adequate notice of her *Beck* rights, I would decline to find an 8(b)(2) violation under either theory. If Joynt had notice of these rights on January 19, and had not tendered payment of any dues (as I have found) by February 2, it would have been perfectly reasonable for the Union to demand her termination, given the fact that she had been working for Kichler for almost 3 months.

Joynt's testimony that Linda Hogue offered her the opportunity to pay her dues by bringing a certified check or money order to the union hall disproves the General Counsel's theory that the Union really sought Joynt's discharge due to her refusal to sign a dues-deduction form.

⁹ Since the Union never provided Joynt the opportunity to become a fee objector, it is not necessary to decide whether the Union can collect 100 percent of its dues and later refund the percentage apportioned to representational activities. It is also unnecessary to decide whether the failure of the Union to supply additional and more recent information on its expenditures is consistent with *Beck* and *California Saw*.

L.D. Kichler Company, through Mary Lou Mankowski, violated section 8(a)(1) in telling Ella Joynt that she had to sign a dues-deduction authorization form or face discharge.

The Board has repeatedly held that dues-checkoff authorizations must be voluntary. An employee has the right, under Section 7 of the Act, to refuse to sign a dues-checkoff form.

Kichler's brief at page 6, states that neither James Sabat nor Mary Lou Mankowski, Kichler's payroll administrator, told Joynt that she would have to use the dues-checkoff option to pay her union dues. However, Mankowski testified that she told Joynt on January 15, that "she has to have dues deducted and she could be discharged if she didn't pay dues." Mankowski did not explain to Joynt that dues could be paid directly to the Union. Indeed, she conceded that she was not aware that Joynt had such a choice. In essence, Mankowski's testimony amounts to a concession of the allegations in paragraph 7 of the complaint. I dismiss the other allegations regarding Kichler since I have credited the testimony of James Sabat, denying those allegations, over the testimony of Ella Joynt.

CONCLUSIONS OF LAW

1. L. D. Kichler Company, through its agent, Mary Lou Mankowski, violated Section 8(a)(1) in telling Ella Joynt that she had to sign a dues-deduction authorization form or be fired.

2. IBEW Local 1377 violated Section 8(b)(1)(A) in failing to advise Ella Joynt, before asking her to sign a union membership card, that her membership obligations under the union-security clause of its collective-bargaining agreement with Kichler, only obligated Joynt to pay union dues and fees attributable to the union's representational activities.

3. IBEW Local 1377 violated Section 8(b)(2) of the Act in requesting Kichler to discharge Ella Joynt and in causing her discharge.

THE REMEDY

Having found that IBEW Local 1377 unlawfully caused L.D. Kichler Company to discharge Ella Joynt, it is recommended that the Union make Joynt whole for any loss of wages and benefits she may have suffered as a result of the Union's action, less her net interim earnings, up to the date of her reinstatement in October 1998. The amount of backpay shall be computed with interest as provided for in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹⁰

ORDER

The Respondent, International Brotherhood of Electrical Workers, Local Union 1377, AFL-CIO, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Requesting and causing the termination from employment of Ella Joynt, or any other agency fee payer, prior to informing them of their right to pay dues and fees attributable only to representational activities, the amount of their agency fee delinquency, and providing them with an opportunity to pay that amount.

(b) Seeking to obligate any employee, who is subject to a union security clause, to pay union dues and fees prior to informing them of their right to pay such dues and fees only for representational activities.

(c) Soliciting employees, who are subject to a union security clause, for union membership without advising them that they may limit their membership to the payment of dues and other fees for representational activities.

(d) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make Ella Joynt whole for any loss of earnings and other benefits suffered as a result of the discrimination against her in the manner set forth in the remedy section of the decision.

(b) Within 14 days from the date of this Order, remove from its files, and ask the Employer to remove from the Employer's files, any reference to the unlawful discharge and within 3 days thereafter notify Ella Joynt in writing that it has done so and that it will not use the discharge against her in any way.

(c) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Within 14 days after service by the Region, post at its union office in Cleveland, Ohio, copies of the attached notice marked "Appendix."¹¹ Copies of the notice, on forms provided by the Regional Director for Region 8, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately on receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the union office involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current members and individuals who were members at any time since November 6, 1997.

(e) Sign and return to the Regional Director sufficient copies of the notice for posting by L.D. Kichler Company, if willing at all places where notices to employees are customarily posted.

¹⁰ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

¹¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹²

ORDER

The Respondent, L.D. Kichler Company, Independence, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Coercively telling any employee that they must sign a dues-deduction authorization form or face discharge.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days after service by the Region, post at its Independence, Ohio facility copies of the attached notice marked "Appendix."¹³ Copies of the notice, on forms provided by the Regional Director for Region 8, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately on receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since January 15, 1998.

(b) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

Dated, Washington, D.C. March 29, 1999

APPENDIX A

NOTICE TO MEMBERS

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

¹² If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

¹³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT solicit membership in the Union from employees subject to a union-security clause without notifying them that their membership obligation is limited to dues and fees attributable to representational activities.

WE WILL NOT request or cause the termination from employment of Ella Joynt, or any other agency fee payer, without informing them of the amount of their agency fee delinquency and providing them with an opportunity to pay that delinquency.

WE WILL NOT in any other manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL make Ella Joynt whole for any loss of earnings and other benefits suffered as a result of our causing her termination on February 2, 1998.

WE WILL, within 14 days from the date of the Board's Order, remove from our files, and ask the Employer to remove from the Employer's files, any reference to the unlawful discharge, and WE WILL, within 3 days thereafter, notify Ella Joynt in writing that we have done so and that we will not use the discharge against her in any way.

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION 1377

APPENDIX B

NOTICE TO EMPLOYEES AND MEMBERS

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT tell employees that they must sign a union dues-deduction authorization form or face discharge.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

L.D. KICHLER CO.